

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**February 18, 2010**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, February 18, 2010, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: G. Nelson Van Fleet, Chair; Debra Miller Stevens, Vice Chair; Shawn Farney; David Dennis; Darrell Downing; David Foster; Bud Hentzen; Hoyt Hillman; Joe Johnson; Don Klausmeyer; Ronald Marnell; John W. McKay Jr.; M.S. Mitchell and Don Sherman (out @3:00 p.m.). Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; Joe Lang, Chief Deputy City Attorney; Bob Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

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1. Approval of the February 4, 2010 MAPC meeting minutes:

**MOTION:** To approve the February 4, 2010 minutes, as amended.

**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (12-0-2).  
**DOWNING** and **HILLMAN** – Abstained.

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### **2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

### **3. PUBLIC HEARING – VACATION ITEMS**

- 3-1. VAC2010-01: City request to vacate a platted easement,** generally located midway between I-135 and Central Avenue, west of 159<sup>th</sup> Street East and north of Sharon Lane.

**OWNER/APPLICANT:** Terradyne Residential LLC (owner) Craig Smith (applicant)

**AGENT:** Poe and Associates, c/o Bill Fox

**LEGAL DESCRIPTION:** The five-foot wide platted maintenance access easements located on Lot 20, Block 2, Terradyne West Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located between I-35 and Central Avenue, west of 159<sup>th</sup> Street East, north of Sharon Lane (WCC #II)

**REASON FOR REQUEST:** Associated with a proposed boundary shift

**CURRENT ZONING:** The subject property and all abutting and adjacent eastern properties are zoned SF-5 Single-family Residential (“SF-5”)

The applicant proposes to vacate the platted maintenance access easement located along the east, interior side yard of Lot 20, Block 2, Terradyne West Addition. Per the platlor’s text, the platted maintenance access easement is to be used for “...pedestrian emergency access, construction, maintenance, the extension of footing and a two-foot overhang of the structure on the adjacent lot.” There are no utilities

in the easement. The applicant proposes a boundary shift, thus the need to remove the platted easement. The Terradyne West Addition was recorded with the Register of Deeds December 12, 2006.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Traffic, Public Works, Water & Sewer, Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described platted maintenance access easement with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  - 1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time January 28, 2010, which was at least 20 days prior to this public hearing.
  - 2. That no private rights will be injured or endangered by the vacation of the described portion of the platted maintenance access easement and the public will suffer no loss or inconvenience thereby.
  - 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Provide Staff with an additional maintenance access easement (with original signatures) dedicated by separate instrument. This easement will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated.
- (3) Provide Public Works with the new square footage for each of the reconfigured lots to address the redistribution of the funds involved in the specials (water, sewer and drainage) for the properties. Must be provided prior to the case going to City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

#### **SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide Staff with an additional maintenance access easement (with original signatures) dedicated by separate instrument. This easement will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.

- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. If necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated.
- (3) Provide Public Works with the new square footage for each of the reconfigured lots to address the redistribution of the funds involved in the specials (water, sewer and drainage) for the properties. Must be provided prior to the case going to City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicant's expense.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**CHAIRMAN VAN FLEET** reported that the applicant had withdrawn the application.

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**PUBLIC HEARINGS**

4. **Case No.: ZON2010-01** - Thomas Yun (Owner/Applicant) Request City zone change from LC Limited Commercial to GC General Commercial on property described as:

Lot 1, Cypress Addition to Wichita, Sedgwick County, Kansas, generally located one quarter mile north and west of the intersection of south Broadway and 47<sup>th</sup> Street South (4551 south Broadway).

**BACKGROUND:** The application area is located approximately a quarter mile north and west of the intersection of south Broadway Avenue and 47<sup>th</sup> Street, with access to the site being off of south Broadway. The subject site is currently zoned LC Limited Commercial ("LC") and the applicant is requesting the property be rezoned to GC General Commercial ("GC"). The site is currently classified as being developed with a restaurant (east half of the site) and a self-storage warehouse (west half of the site). The use of the site as a restaurant is a legal activity in the LC district, per the Unified Zoning Code ("UZC"), as is the self-storage warehouse, which was approved through a Conditional Use by the Metropolitan Area Planning Commission ("MAPC") in August 2002.

The applicant proposes to operate an outdoor storage facility in conjunction with their existing self-storage warehouse facility. The L-shaped orientation of the existing self-storage warehouse provides an open area for their proposed outdoor storage area, while also providing screening from the residential development to the north and west of the subject site. This site has been utilized as a self-storage facility since 2002 and other self-storage facilities are currently operating on the other side of Broadway, and along MacArthur, less than a mile north of the subject site. Currently, some outdoor storage is occurring on the site and the applicant is attempting to come into compliance by applying for the rezone to GC, which happens to be the predominant zone classification along this stretch of South Broadway.

As part of the preparation for this application it was noted that the current self-service warehouse does not comply with all supplementary use regulations contained in Sec. III-D.6.y along with all the conditions originally set forth by CON2002-00036. That conditional use permit had 11 conditions attached to its approval, but two of those conditions have not been totally complied with; comply with the requirements of Section III.D.6.y, and that screen walls shall be of a concrete or masonry material, and shall be

consistent in color with the storage buildings. A landscape plan appears to have been submitted as part of the previous conditional use; however, there currently is no landscaping on site to reflect the submitted plan.

Along with the rezone request, staff recommends that a Protective Overlay (“PO”) be included to emphasize the landscaping and screening of the proposed outdoor storage area. The proposed PO will have the applicant add landscaping in the space between the existing storage facility and the north and west property line. Also the PO will require a screening fence to screen the storage area from ground view from South Broadway.

The zoning of the surrounding property is predominately GC. Property to the north is zoned SF-5 Single-family Residential (“SF-5”) and GC and is currently developed with single-family residences and a hotel/motel. Property to the east of the subject site, across South Broadway, is zoned GC and is currently developed with mini-storage and retail uses. Property to the south of the subject site is zoned GC, and is developed with a vehicle sales lot. Property to the west of the subject site is zoned SF-5 and is developed with single-family residences.

The east half of the subject site is in Flood Zone AE, which identifies that area as be subject to flooding by the 1% annual chance flood. The west half of the subject site is in Flood Zone X, which identifies the area being in a flood insurance rate zone that corresponds to areas outside the 100-year floodplain, and by areas protected from the 100-year flood by levees.

**CASE HISTORY:** The application area is platted as Lots 1, Cypress Addition, recorded May 30, 1974. There have been a couple land use cases on this site since 2002. CON2002-00036 was approved by the MAPC on August 8, 2002, to allow the west half of the site to be used for a self-storage warehouse. ZON2004-00057, with associated case CON2004-00037, was approved by the Wichita City Council on December 21, 2004, to rezone the site from SF-5 to LC and to allow a nightclub within 200 feet of a residential zoning district by Conditional Use.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5 & GC	Residential and Hotel/Motel
SOUTH:	GC & LC	Car Sales and Parking/Access
EAST:	GC	Mini-Storage and Retail
WEST:	SF-5	Residential

**PUBLIC SERVICES:** South Broadway Avenue, along the east side of the subject site, is a paved four-lane minor arterial with approximately 39,000 average daily trips. The nearest major intersection, South Broadway and 47<sup>th</sup> Street South, (currently undergoing major re-construction) is located approximately one-quarter mile south of the subject site. 47<sup>th</sup> Street South is a paved four-lane principal arterial with approximately 39,000 average daily trips. All municipal services are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as “Local Commercial.” “This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing.” In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the **Commercial/Office Objective** to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses,” as well as **Strategy III.B.6** recommends that traffic generated by commercial activities be channeled to the closest major thoroughfare with minimum impact upon local residential streets.

**Commercial Locational Guideline #1** of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. The proposed development complies with this guideline. **Commercial Locational Guidelines #3** recommends site design features that limit noise, lighting and other aspects that may adversely affect residential use; **#5** commercially-generated traffic should not feed directly onto local residential streets; and **#6** commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other appropriate areas such as the CBD fringe; segments of Kellogg; established areas of similar development; and, areas where traffic patterns, surrounding land uses and utilities can support such development.

**RECOMMENDATION:** This site has been utilized as a self-storage facility for some time and uses of similar intensity are common in this area. Staff has received one call about the request and that was just for information on the request, not opposition. Also, staff has received one protest petition from the owners of the self-storage facility across the street from the subject site. With this information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the provisions of a Protective Overlay (PO):

1. Publishing of the ordinance making this zone change effective shall be withheld until the site has been brought into full compliance with all applicable regulations, especially Sec III-D. 6 y.
2. All items stored outdoors are to be screened from ground view from South Broadway Avenue. The fence or screening wall shall be comprised of material, approved by the Unified Zoning Code, capable of screening the merchandise from view. One opening, not exceeding ten feet in width, may be left open during business hours, but must be gated and capable of screening the stored items from view when closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The zoning of the surrounding property is predominately GC. Property to the north is zoned SF-5 and GC and is currently developed with single-family residences and a hotel/motel. Property to the east of the subject site, across South Broadway, is zoned GC and is currently developed with mini-storage and retail uses. Property to the south of the subject site is zoned GC, and is developed with a vehicle sales lot. Property to the west of the subject site is zoned SF-5 and is developed with single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned LC Limited Commercial. The LC district permits a wide range of uses that could be appropriate at this location.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: This property is located adjacent to or near GC, LC and SF-5 zoned property. Approval of this request will not introduce zoning or potential uses into the area that do not already exist.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would cause the applicant an economic hardship since one of the uses on the site is already a self-storage facility. Approval of the request will allow this property to be utilized in a manner appropriate for this location and the proposed PO will mitigate potential negative impacts that could affect nearby properties.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as "Local Commercial." "This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage

warehousing and small scale, light manufacturing.” The current zoning request for GC, subject to the recommended protective overlay, for the 0.3-acre subject site is in conformance with the Comprehensive Plan’s recommended development. In terms of conformance with commercial goals/objectives/strategies and locational guidelines, the application conforms with the Commercial/Office Objective to “Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses,” as well as Strategy III.B.6 Channel traffic generated by commercial activities to the closest major thorough-fare with minimum impact upon local residential streets.

6. Impact of the proposed development on community facilities: All services are in place, and any increased demand on community facilities can be handled by current infrastructure.

**DERRICK SLOCUM**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**HILLMAN** moved, **MITCHELL** seconded the motion and it carried (14-0).

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5. **Case No.: ZON2010-02 and CUP2010-02** - William Lusk Jr. Living Trust c/o W. E. Lusk, Jr. and AETNA Trust c/o W. E. Lusk, Jr. (owners); Baughman Company, PA c/o Russ Ewy (agent) Request City zone change from OW Office Warehouse to MF-18 Multi-Family Residential, GO General Office, and LC Limited Commercial and City request to amend DP-248 to allow MF-18 Multi-Family Residential, GO General Office, and LC Limited Commercial and to adjust parcel lines, all on Parcels 1 and 2 and Reserve A on property described as:

Lots 1 and 2, Block E, and Reserve A, Meadowland Addition to Sedgwick County, Kansas, generally located between 127th Street East and K-96 and north of Turnpike.

**BACKGROUND:** The applicant proposes a zone change from OW Office Warehouse (“OW”) to LC Limited Commercial (“LC”), GO General Office (“GO”) and MF-18 Multi-Family Residential (“MF-18”) and Amendment #1 to DP-248 Meadowland Commercial Community Unit Plan. The amendment would transition the property located west of K-96, south and east of the off-ramp from K-96, east of 127<sup>th</sup> Street East and north of the turnpike from OW industrial use to LC and GO commercial use and MF-18 Multi-Family Residential use. The site is 36.65 acres.

The area is only a portion of the total area encompassed by DP-248 Meadowland Commercial CUP. The remaining 145-acre tract is located east of K-96, north of Kellogg and west of 143<sup>rd</sup> Street East. This amendment would not affect the development rights and zoning of the area east of K-96 or any of the provisions of Parcel 3 through Parcel 23 or the Reserves.

The proposed CUP divides Parcel 1 into two parcels. The new Parcel 1A would be a 2.52-acre parcel surrounded on three sides by the edges of the K-96 off-ramp and 127<sup>th</sup> Street East. Requested zoning for Parcel 1A is LC. The zone change request for the remainder of Parcel 1, 19.85 acres, is MF-18. Reserve A for drainage purposes divides Parcel 1 from Parcel 2 and would be unchanged from its current SF-5 zoning and boundaries. Parcel 2, 12/13 acres in size, is located south of Reserve A, east of K-96 and extending southward to the turnpike would be zoned GO. The majority of Parcel 2 is located in the Zone X floodplain; probably one-fourth of Parcel 1 also is in Zone X.

In terms of multi-family use, the CUP would allow a build-out at the MF-18 density of 18 dwelling units per acre. This would permit 45 dwelling units on Parcel 1A, 357 on Parcel 1 and 218 on Parcel 2. In terms of nonresidential use, Parcel 1A would allow two nonresidential buildings, Parcel 1 would allow three and Parcel 2 would allow three. Building height would be 45 feet, maximum building coverage is

30 percent and maximum gross floor area is 35 percent for nonresidential use and 41.5 percent for residential use. Setbacks would remain as 35 feet along the K-96 off-ramp and 127<sup>th</sup> Street East, reduced to 15 feet along the right-of-way of K-96. The three parcels will share consistent parking lot elements, limited to 24 feet in height, and architectural elements and employ residential type materials.

The property to the west of 127<sup>th</sup> Street East is zoned SF-5 Single-Family Residential. North of Douglas Avenue, the land is developed with scattered single-family residences on large acreages; south of Douglas Avenue the property is a large vacant tract. 127<sup>th</sup> Street East ceased to afford through public access at Douglas Avenue for a number of years. The land north of Parcel 1A and the K-96 off-ramp is zoned SF-5 Single-Family Residential and is vacant. K-96 and the turnpike form major barriers dividing the tract from the land to the east and south.

**CASE HISTORY:** The property is platted as Meadowland Addition, recorded April 3, 2002. DP-248 Meadowland Commercial Community Unit Plan was approved April 11, 2000.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Vacant
SOUTH:	GC	Vacant commercial building, equipment rental, vehicle repair
EAST:	LC, SF-20	Highways, vacant
WEST:	SF-5	Residential, vacant

**PUBLIC SERVICES:** The property has direct access to 127<sup>th</sup> Street East, an urban collector from the K-96 off-ramp to Douglas Avenue and a local street with access closed to through traffic south of Douglas Avenue. Three points of access are permitted from Parcel 1A and 1, and three points of access from Parcel 2. The nearest traffic counts are for the freeway ramps from K-96 to Kellogg (which does not affect the surface streets) and ½ mile north at Central and 127<sup>th</sup> Street East. All traffic must flow north on 127<sup>th</sup> Street East, and from there east or west on Central, or west on Douglas Avenue.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “employment/industry center.” Other than the proposed use of the GO tract for office use and the LC uses also typical of employment/industry center, the requested change would not be in conformance with its current guidelines. In terms of compatibility with surrounding land use recommendations, the tract to the north is recommended as “local commercial,” which would correspond to the proposed LC use, the tract to the northwest of 127<sup>th</sup> Street East and Douglas Avenue is shown for “urban residential” and the tract to the southwest of 12<sup>th</sup> Street East and Douglas is shown as “urban development mix.” This would be in conformance with the requested amendment.

**RECOMMENDATION:** Parcel 2 abuts the turnpike, K-96 and the tip touches Kellogg, yet its only access is northbound on 127<sup>th</sup> Street East because this street does not allow public access across Kellogg. The use of the property for GO could result in more intense uses than OW, but primarily adds the ability to mix office and residential uses instead of strictly industrial with office mix. The transition of Parcel 1 to multi-family use is a major shift from industrial use. The site is isolated on all sides but the west. It can be seen as a transition from lower-intensity single-family uses west of 127<sup>th</sup> to higher intensity residential uses buffering the highways. The corner parcel for LC represents an extension of LC type uses, but the tract across the road to the north was approved with similar use and CUP provisions in 2008. Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to the following conditions:

- A. APPROVE the zone change (ZON2010-00002) to LC, GO and MF-18.
- B. APPROVE DP-248 Amendment #1( CUP2010-00002), subject to the following conditions:
  1. Rename the CUP to reflect its combined residential/nonresidential status.

2. Remove the prohibition on group homes.
3. Add the following language: Gas islands, ATMs, bank drive-through windows, overhead doors and similar utilitarian items shall be screened or sited behind buildings to minimize their view from 127<sup>th</sup> Street East.
4. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
5. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
6. The ordinance/resolution establishing the zone change shall not be published until the platting has been recorded with the Register of Deeds.
7. Prior to publishing the ordinance/resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-321) includes special conditions for development on this property.
8. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property to the west of 127<sup>th</sup> Street East is zoned SF-5 Single-Family Residential. North of Douglas Avenue, the land is developed with scattered single-family residences on large acreages; south of Douglas Avenue the property is a large vacant tract. 127<sup>th</sup> Street East ceases to be a public street at Douglas Avenue. The land north of Parcel 1A and the K-96 off-ramp is zoned SF-5 Single-Family Residential and is vacant. K-96 and the turnpike form major barriers dividing the tract from the land to the east and south.
2. The suitability of the subject property for the uses to which it has been restricted: The transition from industrial to residential uses is more compatible for the residential area to the northwest, although it will be allow multi-family densities rather than low density residential.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The use will be different but may be less detrimental than the original approval, although it will probably increase traffic volumes on 127<sup>th</sup> Street East and Douglas Avenue.
4. Length of time the subject property has remained vacant as zoned: Eight years.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "employment/industry center." Other than the proposed use of the GO tract for office use and the LC uses also typical of employment/industry center, the requested change would not be in conformance with its current guidelines. In terms of compatibility with surrounding land use recommendations, the tract to the north is recommended as "local commercial," which would correspond to the proposed LC use, the tract to the northwest of 127<sup>th</sup> Street East and Douglas Avenue is shown for "urban residential" and the tract to the southwest of 12<sup>th</sup> Street East and Douglas is shown as "urban development mix." This would be in conformance with the requested amendment.
6. Impact of the proposed development on community facilities: The requested amendment probably will result in an increase in traffic since office generally creates more traffic demand than industrial use. A total of 620 dwelling units (if whole tract is built-out at the maximum 18 dwelling unit rate and no mix of other office/commercial uses) would yield about 6,000 trips per



day, whereas 36 acres of industrial use could offer a wide variety of traffic generation, but typically more in the range of 4,000 trips per day.

**DONNA GOLTRY**, Planning Staff presented the Staff Report.

**HILLMAN** asked if staff saw any future problems regarding this particular area with regard to the south by-pass.

**GOLTRY** said she did not have an answer to that question.

**MITCHELL** referenced the photograph of the site facing south and asked what traffic the road was closed to?

**GOLTRY** said you can get to the road to access the property; however, you can't go across Kellogg to continue along 127<sup>th</sup> on the south side of Kellogg.

**MITCHELL** commented that considering the amount of traffic that could be generated from the application, he believed that a plat was needed so future use of 127<sup>th</sup> through this area could be determined as well as what improvements should be made and at what point they should be made. He commented that there was a culvert that was probably not adequate for drainage or traffic. He referred to the contour map and commented about the amount of relief on the two parcels, especially the one to the south of the drainage. He said that is going to require some fill in the floodplain and possibly floodway and a considerable amount of grading. He said approval should be contingent on platting of both of the tracts.

**GOLTRY** responded that the property is already platted, so **MITCHELL** was requesting a replat?

**MITCHELL** said he does not believe the current plat provides the guarantees that he is requesting be considered.

**GOLTRY** said she did not believe the improvements that were guaranteed and the access points that were allowed four to six years ago have been enacted because there has been no development on this CUP site. She suggested that he ask the agent further questions on that issue.

**MITCHELL** asked if there was any guarantee for the improvement of 127<sup>th</sup> street as a condition of that plat?

**GOLTRY** said yes.

**FOSTER** asked if the "dead end" condition on 127<sup>th</sup> Street was an issue with the Fire Department?

**GOLTRY** said this has not been shown to the Fire Department. She said providing two points of access will come up when the applicant submits building plans. She mentioned several exits from the property.

**RUSS EWY, BAUGHMAN COMPANY, PA, AGENT FOR THE APPLICANT** said they agree with staff recommendations. He said the area was platted in spring, 2002, with full petitions on infrastructure including paving 127<sup>th</sup> Street south of Douglas. He commented that the developer's intent was to put in the first phase of 127<sup>th</sup> down to Reserve A, which contains the floodplain and floodway. He said Lot 1 and Lot 2 were platted as part of the Meadowland Addition. He said Lot 1 will be developed as phase 2. He said they have no intention of 127<sup>th</sup> Street crossing Kellogg and connecting the north and south portions of the street. He said they ultimately expect the frontage road the north side of Kellogg to swoop up and connect with 127<sup>th</sup> Street. He said there is also a street between Kellogg and Douglas that can also be extended, but that is speculation, nothing is confirmed at this point. He said he would stand for questions.

**HILLMAN** asked if there were any detention ponds planned in this area.

**EWY** said yes, it was his understanding there would be on-site detention ponds.

**MOTION:** To approve subject to staff recommendation.

**HILLMAN** moved, **HENTZEN** seconded the motion, and it carried (14-0).

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6. **Case No.: CON2009-46** - Cornejo & Sons, Inc., Morgan B. Koon (applicant, agent)  
Request County Conditional Use to permit mining/quarrying (soil extraction) on property described as:

The South half of the Southeast Quarter of the Northeast Quarter, except the East 50 feet for road, of Section 23, Township 28, Range 1 East of the 6th P.M., Sedgwick County, Kansas.

AND

The South 330 feet of the East 662.83 feet of the North half of the Southeast Quarter of the Northeast Quarter, except the East 50 feet for road, of Section 23, Township 28, Range 1 East of the 6th P.M., Sedgwick County, Kansas.

AND

The North half of the Southeast Quarter of the Northeast Quarter, except the South 330 feet of the East 662.83 feet and except the East 320 feet of the North 316 feet and except the East 50 feet to the road of Section 23, Township 28, Range 1 East of the 6th P.M., Sedgwick County, Kansas, generally located 1/4 south of 47th Street and west of Oliver Avenue (5051 S. Oliver Ave.).

**BACKGROUND:** The applicant is seeking approval of Conditional Use 2009-00046 to permit mining and quarrying on 37 acres located west of south Oliver and approximately one-quarter mile south of 47<sup>th</sup> Street South. The applicant intends to mine the site for clay that can be used as “cap” material for final cover for landfills or other construction uses. The site is mostly vacant but appears to be or has been used to store construction equipment. Access to the site will be from an existing drive located on Oliver. The site will have only one access point. At any one time only one 200 by 200-foot area will be excavated. Each 200 by 200-foot excavated area will be filled in with dirt as the borrowing is completed, allowing the site to be returned to its pre-excavation topography. Excavation is scheduled to take approximately one year. The site plan submitted with the application is sufficient to conduct the public hearings; however, if the request is approved the applicant shall submit a revised site plan that complies with supplemental use regulation Sec. III-D.6.gg. (2), (3).

The site is currently zoned LI Limited Industrial (“LI”). The LI district accommodates moderate intensity manufacturing, industrial, commercial and complementary land uses. The Wichita-Sedgwick County Unified Zoning Code permits “mining and quarrying” with Conditional Use approval in the LI district subject to Supplementary Use Regulations Article III, Section III-D.6.gg (1)-(23), listed below. A triangular portion of the site located in the extreme southeastern corner of the site is subject to the Airport Overlay District I-South West Subdistrict (“A-O I-S WSd”). The triangle zoned A-O I-S begins at the southeast corner of the property and runs 490 feet north along Oliver and 113 feet west along the south property line from the same southeastern corner and is closed by the 611-foot southwest to northeast angle. If the property is ever platted the A-O I-S WSd regulations would apply to the entire property even though only a portion of the lot is covered by the overlay district. The A-O district specifies land uses and development standards designed to ensure a compatible relationship between McConnell Air Force operations and other land uses in the vicinity. Unified Zoning Code general regulations: Sec. III-C.5.f (1) indicates that the regulations of the underlying zoning district apply unless specifically modified by this section; Sec. III-C.5.g.(b) indicates the following uses are permitted: agriculture, excluding livestock farming / animal breeding, agricultural structures, and retail or wholesale sales permitted by Sec. III-D.6.b; surface parking lots, outside storage areas, airport runways and taxiways that are accessory to adjacent uses; all other uses legally established prior to August 31, 2007, subject to the limitations set

forth in Sec. III-C.5.f. The site also has a high voltage electric transmission line located approximately 400 feet east of the western property line running north and south through the site.

Property surrounding the site is zoned a variety of districts: LI, IP-A Industrial Park-Airport (“IP-A”), AFB Air Force Base (“AFB”), A-O I-S and SF-5 Single-family Residential (“SF-5”). Surrounding properties are vacant or used for agriculture, residences, office, warehouse and McConnell Air Force Base. The center-line line of the southern take off and approach for planes utilizing McConnell Air Force Base is located 1,620 feet east of the application’s eastern property line.

Because of the need to protect current and potential missions of McConnell Air Force Base, Wichita and Sedgwick County have enacted various land use regulations that are reflected in the zoning that is present in the application area. One of the concerns with mining or quarrying is the creation of features that would retain water and attract geese or other birds that present a threat to air operations from bird strikes. The base has hired a private contractor who, with the permission of land owners, takes a dog(s) onto property near the base to discourage the presence of birds.

Most other mining and quarrying applications result in a permanent pit that creates a lake. Because this application is different in that they do not intend to leave a pit they are seeking to waive some of the standard supplementary use regulation requirements contained in Sec III-D.6.gg: (4) waive the fencing requirement; (5) if the excavation does not reach groundwater the six feet of depth below water level is waived; (10) waiver of platting unless a building or other activity that typically triggers platting occurs; (14) waive the section prohibiting a contractor’s storage yard and (15) waive that portion requiring the removal of the dirt excavating equipment at the end of excavation. The arguments for the waivers are in order: since they are filling as they go the holes do not pose the same threat that a permanent pit would; since they are not mining sand and intend to fill each hole the six-foot depth requirement is unnecessary; platting will be triggered when they request a building permit or other activity that typically triggers platting; the site is zoned LI which allows a contractor’s storage yard by-right and since they are excavating soil, and not sand, they will be using a backhoe or scraper, not pumping machinery normally associated with sand mining and quarrying.

**CASE HISTORY:** The Derby Planning Commission reviewed this request on February 4, 2009, and recommended approval (6-0) subject to staff recommendations plus the requirement that the applicant install “orange fencing” around unfilled excavation areas. At least four neighboring property owners spoke. They commented on the closeness of the homes in Deer Lake Estates to the applicant’s property, some of them being only 20 feet from the property line; the impact heavy equipment would have being used close to their homes; the lack of fencing and the danger the excavation presents to area children who play on the property; drainage concerns and what type of material will be used to fill the holes.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LI	Limited Industrial; warehouse, office
SOUTH:	IP-A	Industrial Park – residence, agriculture
EAST:	AFB	Air Force Base and A-O I-S Airport Overlay District I-South, IP-A
		Industrial Park – McConnell Air Force Base; vacant land owned by McConnell Air Force Base, vacant
WEST:	LI	Limited Industrial, SF-5 Single-family Residential; manufactured home subdivision, agriculture

**PUBLIC SERVICES:** Oliver is a paved four-lane arterial street with 50 feet of half-street right-of-way. Mining and quarrying operations generally do not normally provide public services. Public sewer and water is located in the subdivision to the west, but it may not be available for extension to the site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map adopted on June 1993, and amended in May 2005, indicates the site is appropriate as “employment / industry center.” The employment / industry center encompasses areas that constitute centers or

concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The Comprehensive Plan's industrial land use strategies provide limited guidance. Strategy IV.A.1 indicates that appropriate buffers are needed to protect industrial areas from residential encroachment. Strategy IV.A.2 indicates that industrial uses that are based upon a natural resource are appropriate in rural areas of Sedgwick County. Strategy IV.A.3 says that industrial traffic should be channeled to minimize any negative impact on local residential streets. The Oaklawn Sunview Neighborhood Revitalization Plan, adopted November 30, 2001, depicts this site as being appropriate primarily for commercial service (warehouse) use.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use permits mining or quarrying of soil that is in compliance with the Supplementary Use Regulations found in the Article III, Section III-D.6.gg of the *Wichita-Sedgwick County Unified Zoning Code*, (listed at the end of this report) unless modified by this Conditional Use. The following supplemental use regulations are modified: (4) waive the fencing requirement; (5) if the excavation does not reach groundwater the six feet of depth below water level is waived; (10) waiver of platting unless a building or other activity that typically triggers platting occurs; (14) waive the section prohibiting a contractor's storage yard and grading of slopes and (15) waive that portion requiring the removal of the dirt excavating equipment at the end of excavation.
2. Prior to commencing operations, the applicant shall submit a revised site plan that depicts limits of excavation by establishing setbacks of 100 feet from the property line and 50 feet from either side of the utility easement, and the phasing of excavations (the location of each 200 by 200-foot pit and what sequence of excavation). Excavation at any one time is limited to a maximum size of 200 feet by 200 feet. The previously excavated area must be filled with clean dirt prior to beginning another excavation.
3. When excavations are completed, the site's topographic features shall be substantially returned to pre-excavation contours unless alternate contours have been approved by a grading plan that has been approved by County Public Works.
4. The site shall be managed so that water is not allowed to pond or to be retained on-site for more than 24 hours, and any water that is retained on the site shall be retained in such a manner that the water feature does not attract or become habitat for birds.
5. The site shall be developed and operated in a manner consistent with the approved site plan, operations plan for extraction and the development standards contained in this Conditional Use.
6. The applicant shall provide dust control measures, such as watering or gravel or other effective means if so directed by code enforcement officials, on the roads within the site or the driveway providing access to the site.
7. The Conditional Use permit shall be effective for 12 months beginning from the date of final approval.
8. If so directed by the County Engineer, the applicant shall install 100 feet of AB-3 rock or take other mud reducing measures adjacent to the Oliver Street right-of-way within two weeks of being so directed to minimize the tracking of mud on the public street.
9. The applicant shall grant access to the site for McConnell Air Force Base's bird harassment contractor during normal hours of operation.
10. In addition to other applicable enforcement remedies, if the Zoning Administrator finds that there is a violation of any of these conditions of approval, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property surrounding the site is zoned a variety of districts: LI, IP-A Industrial Park-Airport ("IP-A"), AFB Air Force Base ("AFB"), A-

O I-S Airport Overlay District I-South (“A-O I-S”) and SF-5 Single-family Residential (“SF-5”). Surrounding properties are vacant or used for agriculture, residences, office, warehouse and McConnell Air Force Base. The center-line line of the southern take off and approach for planes utilizing McConnell Air Force Base is located 1,620 feet east of the application’s eastern property line. This is an area that has some sensitivity to the types of development that are permitted in order to protect the mission of McConnell and to ensure compatible land uses near existing residential, office and warehouse uses.

2. The suitability of the subject property for the uses to which it has been restricted: It appears the site has been zoned LI for many years. The LI district permits a wide variety of non-residential uses, including construction related services. The site has been utilized in the past as currently zoned and could be in the future.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Because of the need to protect current and potential missions of McConnell Air Force Base, Wichita and Sedgwick County have enacted various land use regulations that are reflected in the zoning that is present in the larger application area. Mining and quarrying of soil provides the opportunity for water to collect in the excavated areas that can attract geese or other birds that present a threat to flight operations from McConnell. The applicant’s proposal to “fill as they go” reduces the potential for the site to become more attractive for birds, and their willingness to allow access to government contractors who work to reduce bird populations in the area also mitigates potential detrimental effects. The conditions of approval should address foreseeable impacts on existing residential and non-residential uses.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial presumably will cause the applicant a loss in both money and time. The public gains the closure of a construction and demolition landfill.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map adopted on June 1993, and amended in May 2005, indicates the site is appropriate as “employment / industry center.” The employment / industry center encompasses areas that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The Comprehensive Plan’s industrial land use strategies provide limited guidance. Strategy IV.A.1 indicates that appropriate buffers are needed to protect industrial areas from residential encroachment. Strategy IV.A.2 indicates that industrial uses that are based upon a natural resource are appropriate in rural areas of Sedgwick County. Strategy IV.A.3 says that industrial traffic should be channeled to minimize any negative impact on local residential streets. The Oaklawn Sunview Neighborhood Revitalization Plan, adopted November 30, 2001, depicts this site as being appropriate, primarily, for commercial service (warehouse) use.
6. Impact of the proposed development on community facilities: Truck traffic will likely increase on Oliver for the life of the permit, otherwise mining and quarrying do not require most other community facilities.

Wichita-Sedgwick County Unified Zoning Code Supplementary Use Regulations

gg. Mining or Quarrying, sand and gravel extraction. Sand and gravel extraction operations shall be subject to the following conditions:

- (1) The extraction operation on the Site shall proceed in accordance with an operational plan approved by the Planning Commission. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved operational plan.

To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted in the extraction office.

- (2) The operational plan shall illustrate which area is to be excavated and at what time.
- (3) As part of the Conditional Use approval, the development plan for Uses after the conclusion of the extraction operation shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
- (4) Abutting the perimeter of the application area, a minimum 60-inch high Fence shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. Said Fence shall be placed on steel posts that are not less than seven feet tall. The posts shall not be set more than 16 feet apart. The Fence shall be a minimum height of 60 inches and shall be of the following types of construction:
  - (a) a 48-inch high or higher chain link Fence with three or more strands of barbed wire; or
  - (b) a 48-inch high or higher solid metal or solid masonry Screening Wall with three or more strands of barbed wire; or
  - (c) a 48-inch high or higher wood fence that may have cracks or openings not in excess of five percent of the area of such Fence, with three or more strands of barbed wire; whereby,
  - (d) the term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of four inches apart and placed at the top of the Fence and gate at an angle not to exceed 160 degrees facing away from the excavation.
- (5) The extraction shall be to at least a minimum depth of six feet below the normal water table, as determined by the Director of Sedgwick County Code Enforcement.
- (6) The Owner of the property shall be responsible for minimizing blowing dust from the Site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the Site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
- (7) All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
- (8) To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than five horizontal to one vertical.
- (9) Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
- (10) The property shall be platted prior to the issuance of any zoning or Building Permits, except those permits necessary for the extraction operation.

- (11) No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the development area, unless duly authorized under provisions of this Code and amendments thereto.
- (12) The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the City or County legal counsel (as applicable), prior to the commencement of any extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
- (13) The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
- (14) Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand or overburden and sand pumping and related equipment shall be removed from the subject site.
- (15) The length of time for the extraction operation and the hours of operation for removal of the overburden shall be set at the time of approval of the Conditional Use. Subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises.
- (16) Hours of operation for the removal of overburden shall be limited to 6:00 a.m. to sunset. The same hours of operation shall apply if sand removal is conducted with the use of non-electric driven equipment. If sand is removed with the use of an electrical pump, sand extraction may operate 24 hours a day.
- (17) All on-site water and sewage facilities shall be approved by and constructed to the standards of the Department of Code Enforcement for the County or Department of Environmental Services for the City.
- (18) Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of Health and Environment rules and regulations.
- (19) The applicant shall make the Site available to the Department of Code Enforcement for land in the County or Department of Environmental Services for land in the City for the installation and management of groundwater monitoring wells.
- (20) Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Department of Environmental Resources for land in the County or Department of Environmental Services for land in the City.
- (21) A drainage plan shall be submitted to and approved by City or County Public Works (as applicable) prior to starting the extraction operation. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan. Additional requirements, such as a public drainage easement, a floodway reserve, or a covenant authorizing the area of the Site for use as a detention storage facility for public drainage purposes, may be required as a condition of approval for the drainage plan.

- (22) All operational roads shall be maintained in a sand or graveled condition and shall be treated water or other acceptable dust retardant to minimize blowing dust.
- (23) All applicable local, state, and federal permits necessary for the extraction operation shall be obtained and maintained.

**DALE MILLER**, Planning Staff presented the Staff Report. He said the Derby Planning Commission approved the request subject to staff recommendation. In addition, he said they recommended installation of orange construction fencing around all excavated areas. He said the applicant has also agreed, as a condition of approval, to contract for “bird harassment” services similar to what is done at McConnell Air Force Base. He added that **MIKE MCKAY, CIVIL ENGINEER, MCCONNELL AIR FORCE BASE**, was present to answer any questions.

**MITCHELL** clarified that because the sliver at the southeast corner is within the outline of the runway pattern, the balance of the property is classified the same. He asked what this would do to future use of land outside the black line.

**MILLER** said any development will have to comply with the Air Force District Protective Overlay requirements. He said storage of construction equipment and excavation are permitted uses.

**MITCHELL** asked how the overlay affects industrial uses?

**MILLER** said there is a cap on the number of employees allowed.

**MITCHELL** how far west does the overlay go?

**MILLER** said Mr. McKay may know off the top of his head.

**MILLER STEVENS** asked staff to review the waivers the applicant was requesting.

**MILLER** listed the requested waivers as follows: #4 the fencing requirement; #5 if the excavation does not reach groundwater, the six feet of depth below water level. He explained since they are not anticipating hitting water, they do not believe that will be a problem. He mentioned that there can't be standing water for more than 24 hours at the site. He said #10 which was the standard platting requirement because they are not intending to build a building at the site; #15 the clause requiring that the sand extraction operating pumping system used be removed within a certain amount of time (excavator and backhoes) because they will be using the area as a construction storage yard.

**MILLER STEVENS** clarified that the applicant is pulling dirt out of the area and bringing in dirt from somewhere else to refill the holes.

**MILLER** said that was correct and added that it has to be “clean-fill” material. He commented that one of the concerns expressed at the Derby Planning Commission meeting was that Mr. Cornejo was removing material from the construction & demolition landfill site at K-15 and 31<sup>st</sup> Street and bringing it over to this location.

**HILLMAN** asked how they could not have standing water on the property if they are excavating 200 x 200 foot areas, rolling around large equipment, and having open pit areas? He also asked how they were going to catch and maintain sediment and erosion on the property?

**MILLER** said if a whole fills up with water and it is not cable of draining within 24-hours, then it needs to be pumped out into the creek further south of the property.

**RON CORNEJO, CORNEJO AND SONS, INC**, said he would stand for questions.



**HILLMAN** commented that he had walked the ground and that there is quite a bit of clay in the area. He asked about the time frame and whether this would be a several year process or will they be able to mine the clay and get the area reseeded within a year?

**CORNEJO** explained that they needed the clay to cap the Construction and Demolition landfill in south Wichita. He said they will be seeding as they go and that it should be completed within a year.

**HILLMAN** clarified that the reseeded area will restore the area to the current topography.

**CORNEJO** said they will put the area back to the current topography.

**HILLMAN** asked how they will control erosion.

**CORNEJO** explained that it was approximately a 50-acre site. He said they will start in the middle of it. He said the water runs from north to south. He said as they dig holes and it rains, and the holes fill with water, if it won't soak in they will probably pump that water out, let it run across the property and into the creek. He said if they have sediment issues they will use some silt fencing, but they don't anticipate that.

**HILLMAN** asked if they would keep 20-30 foot of tall grass at the south end of the property?

**CORNEJO** said probably more like several hundred feet of grass. He said they will not be working at the south end of the property.

**MITCHELL** referenced the pond located north of the property. He referenced a previous incident where water discharged from that pond and ran across the property causing erosion problems for Mr. Cornejo. He said it was decided at that time that the pond be designed to retain all runoff that has accumulated. He said he believed for the most part that has worked. However, he said if there is an occasion where water needs to discharge from that pond across the property to get to the creek, he sees nothing in the requirements that recognize that need. He asked if that issue would be accommodated if necessary.

**CORNEJO** said he can't remember in recent history the pond ever running over onto the property; however, if water should run onto the property, they would like to grade the property so the water runs to Oliver or to the creek.

**FOSTER** commented that one of the waivers was to allow equipment to stay on site. He asked what were the long term plans for leaving equipment on site.

**CORNEJO** responded that they have owned the property for 20-30 years and that it has been used for storage of excess equipment. He said within the last year they have been in the process of cleaning up the property. He said the property is in better condition now than it has been in a long time. He said he anticipates the property being cleared and left in a clean state within a year. He said if not, he will move everything closer to Oliver if that is an issue.

**CHAIRMAN VAN FLEET** commented that staff recommended 10 conditions in addition to the fence around the excavation areas recommended by the Derby Planning Commission. He asked if the applicant was in agreement with those conditions.

**CORNEJO** said that was acceptable and they agree to the conditions.

**JIM COSLOW, PRESIDENT DEER LAKE ESTATES HOMEOWNERS ASSOCIATION, 14911 BLACK OAK COURT, WICHITA** said there are approximately 150 homes in Deer Lake Estates, the area which adjoins the property that is being discussed today. He said some of the mobile homes are located as close as 20 feet from the property line. He said it is important that the digging be kept at least

100 feet from the property line. He said there are lots of people and children living in the area and many of the children play in the streets.

He said it is very important that a tall fence be placed on the west side of Cornejo's property between the residential area and the working area. He said they do not want an added attraction such as equipment or the big holes that someone could get hurt or killed on or in. He said if the property is to be used for storage later, there still needs to be a fence to keep children from climbing on the equipment. He said the City and County have requirements for fences around swimming pools to avoid an attraction for children. He said they believe the equipment would be an attraction for children to play on and could be very dangerous.

He said they are also concerned about the level of the ground after work is completed. He said it should not be higher than the residential area which would cause runoff problems of rain. He said they already have wash problems in the area. He said it should not be lower than the residential area which would cause standing water problems that would attract geese and other birds and insects causing flight problems for the Air Force Base, Boeing and Spirit.

He said if this request is approved, they request the following requirements be included in writing: build a high protective fence on the west side of the property; digging be kept 100 feet away from the west property line; and after completion of work; the ground level be returned to the same level as the adjoining residential property.

**HILLMAN** asked if the ground on the site sloped to the Deer Lake area or way from the area? He requested clarification that the neighbors want the ground redone the same as the current conditions.

**COSLOW** said they would like the ground to be flat, as it was originally. He said right now there is one open hole on the property and piles of dirt here, yonder and every place. In addition, he said equipment comes and goes at all times of the day and night. He said they would like to see a six-foot fence on the west property line as far south as the residential area to keep kids off of the equipment and out of the area.

**DENICE ALLIGOOD, 4236 WILDFLOWER CIR, DEER LAKE ESTATES** said she was present as a concerned homeowner. She said she has lived in her home for twenty years; her yard is her passion; and when the weather is good, she spends all her time enjoying and entertaining in her backyard. She referenced her handout and the location of her property next to the site. She said in the twenty years she has lived there Cornejo has used this property for storage of scrap including old tractor tires, filing station gas tanks, shelving, rusty metal, etc. She said there are weeds six feet tall and rusty scrap and junk to look at. She said once the Construction and Demolition landfill at K-15 and 31<sup>st</sup> Street was halted on April 19, Cornejo employees were on the site at 2:00 a.m. the next morning with diggers and trucks working full force. She said she feared at that time that they were just moving the mess from the Construction and Demotion landfill at K-15 and 31<sup>st</sup> Street to this site. She said they began by bringing in loads of dirt and elevating the Oliver side of the property, which caused much concern about water running downhill through Deer Lake Estates. She referenced the picture taken on 11-2-09 which reflected digging of a hole approximately three-quarters as long as a football field, 10-15 feet deep; with no safety barriers. She said she called Sedgwick County to see if there was a permit to work at the site; the County came out; and the neighbors were told Cornejo had no permits filed for that particular property. She said she thought the County would stop the digging at that time, but she was wrong because the hole continued to expand. She commented that she called the County several more times and they investigated and issued fines once the strip mining had begun. She said her primary concern is the effect that this hole and digging activity has had and will continue to have on her home and neighborhood. She said the County has rules to regulate this type of activity for the safety of the community and the protection of property. She said Mr. Cornejo not only chose to ignore the stated concerns of the neighbors but also the attempts by Sedgwick County to enforce its rules. She said there are no precautions around the hole for safety. She said children play in this area all the time; and, in addition, she is concerned about the holes collecting water and serving as breeding areas for mosquitos. She said she met with County officials and

asked them to contact Cornejo and request that a solid fence be put up to deny access to people who should not be back there. She said the County did issue a stop order, but Cornejo shifted the work to weekends or holidays when County workers could not be called to issue a fine. She said she is not asking the Commission to stop Cornejo or interfere with his ability to run his business. She said she is asking the Commission to require that Cornejo meet regulations any other business would have to meet to insure the safety of all people living around his land and to make sure that adjoining property is not damaged and the lives of adjacent homeowners adversely impacted. She said she has consistently proposed that an eight foot fence be installed from the north to the south end of the property along the west side, abutting residential property, preferably 75-feet back from the property line similar to the screening fence that is required around all automobile junkyards. She said if the property is to be used for storage of equipment in the future, she is concerned that this will become an "attractive nuisance" for children in the area. She said as a taxpayer and homeowner she feels that nothing less is appropriate for herself of the neighborhood then a solid fence. She ended by asking what would the Commission ask for if this was in their neighborhood?

**SHERMAN** asked if she was in agreement with the 10 conditions recommended by staff and the one recommendation by the Derby Planning Commission.

**ALLIGOOD** said she would just like a fence put up for safety so that children cannot get onto the property. She said the holes at the site are also soft at the top, so if someone falls in, they are going to have a heck of a time getting out.

**SHERMAN** clarified that she was not in agreement with the proposed orange fencing.

**ALLIGOOD** said that will not stop a child from falling in a hole.

There was brief discussion regarding the fencing and it was clarified that the applicant is requesting a waiver of the standard fencing requirement which was to provide a 60" fence around the perimeter of the application area.

**MIKE MCKAY, CIVIL ENGINEER, MCCONNELL AIR FORCE BASE** said the Accident Potential Zones (APZ's) that extend off the runways are 3,800 feet wide and begin at the runway threshold, not at the end of the runway. He said the clear zone, which is the most restrictive part of the APZ, goes down about 3,000 feet from there; another 5,000 feet is APZ number one; another 8,000 feet is APZ number two.

There was brief discussion of the Airport Overlay District (AOD). **MCKAY** said it was his understanding that the AOD was somewhat independent and takes precedence over underlying zoning in the area. He referenced the 2007 Joint Land Use Study which established the one-half mile wide buffer around the entire perimeter of McConnell Air Force Base and prevented anything higher than 25-feet from being constructed, regardless of the zoning.

**MILLER** said the AOD may specifically prohibit a use that is allowed under a certain zoning classification. He commented that the restrictions are already in place so any activity needs to comply with the AOD.

**HENTZEN** commented that if the base contractor dog keeps geese from nesting out there, there is a lot of water at other airports around the county. He asked in Mr. McKay's evaluation, is it doing much good.

**MCKAY** responded that they feel it is doing a lot of good. He said a Border Collie is used. He said geese are a big problem for them and mentioned air strikes and the efforts to insure that geese don't become an issue. He also mentioned that they restrict take offs and landings one hour before dawn and dusk. He said they plan to renew the contract for this service as long as they can.

**FARNEY** referenced the pictures and depth of the holes being made and asked about compliance with OSHA standards.

**CORNEJO** said they need to slope the banks to keep someone from actually falling into the hole. He said they can roll down the banks, but not fall in.

**FARNEY** asked how deep were the holes?

**CORNEJO** said about 15 feet, and added that they have been filling them just about as fast as they dig them.

**FARNEY** mentioned asphalt on the ground in the pictures and asked if that was being used to fill the holes.

**CORNEJO** said that is not being pushed into the excavation, but that they had some asphalt stored at the site.

**FARNEY** asked if that would be used for recycling.

**CORNEJO** said they are not using this site for recycling, he said most recycling takes place at construction and demolition landfill at K-15 and 31<sup>st</sup> Street.

**FARNEY** asked about the shelving and tires in the hedge row, also in the pictures.

**CORNEJO** said they are in the process of moving most of the material out of the site, when they were stopped by the County. He added that the tires are for re-use.

**CHAIRMAN VAN FLEET** said both speakers asked that a fence be erected along the property line between Deer Lake Estates and Mr. Cornejo's property. He asked Mr. Cornejo to explain his position on that request.

**CORNEJO** said he has been at this location long before Deer Lakes was there. He said the site is really just a big piece of agricultural property that they have used for storage. He said it would be cost prohibitive for him to erect the fence. He said he was willing to fence off the excavation sites.

**HILLMAN** clarified that Mr. Cornejo would be naturalizing the ground when they are done with native grass up to the property line on the west side of the site.

**CORNEJO** said they will seed just a native grass and that they will probably not plant on the west because they are not working on that side of the property.

**HILLMAN** referenced the pictures which showed work within a very few feet of the west property line.

**CORNEJO** said they will restore everything that is being disturbed.

**FOSTER** referenced condition #2 which addresses the 100 foot setback for excavation. He also mentioned Mr. Cornejo agreeing to keep the equipment towards Oliver and asked how that would be accomplished during daily operations at the site.

**CORNEJO** stated that the only daily operation is an excavator and maybe a machine pushing soil back into the excavation. He said they have been moving the machines to Oliver in the evenings because of the children and vandals in the area. He said the equipment that has been back there in the past is the stored materials.

**FOSTER** asked if Mr. Cornejo was agreeable to the added condition of moving equipment after daily operations towards Oliver.

**CORJENO** said he doesn't have a problem with that at all.

**KLAUSMEYER** asked about hours of operation.

**CORNEJO** said typically they operate from 6:30 a.m. – 6:00 p.m. or daylight hours. He mentioned the concern of employees being there in the middle of the night. He said he has yet to verify how that happened or even if it did happen.

**MOTION:** To approve based on 60-inch tall fencing around the holes as they are dug; leveling of materials and spacing; and leaving 100 foot on the south end of the property natural for filtration of the erosion; and that equipment be moved to the Oliver side of the property after daily operations.

**HILLMAN** moved, **J. JOHNSON** seconded the motion.

**MCKAY** clarified that the 60-inch fence was just around the excavated areas.

**HILLMAN** said yes.

**MITCHELL** commented that he did not think you can get 60-inch snow fence.

**MARNELL** asked what the height of the orange construction fencing was.

**CORNEJO** said typically four feet or 48-inch.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation; that the fence height be changed to 48-inch; and that equipment be stored on the Oliver side of the property.

**MARNELL** moved, **HILLMAN** seconded the motion, and it carried (14-0).

**FOSTER** asked about the appropriateness of limiting hours of operation.

**MILLER** said the Commission can do whatever they think is reasonable. He said staff recommendation was from 6:00 a.m. – sunset, which was the standard; however, the Commission could recommend alternative hours.

**FOSTER** said that sounds fine.

**MITCHELL** asked if the substitute motion included a fence adjacent to the property on the west.

**MARNELL** said no it did not.

**MCKAY** noted for the record that he and Mr. McKay from McConnell Air Force Base were not related.

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**MCKAY** recused himself from the item and left the meeting.

7. **Case No.: CON2010-03** - ICT, LLC, c/o Larry Qualls (owner/applicant) Baughman Company c/o Russ Ewy Request City Conditional Use request to amend CON2003-37 (a car wash) to allow

a dryer for the automatic bay on property described as:

Lot 1, Block A, Buff Car Wash Addition to Sedgwick County, Kansas, generally located on the southeast corner of 21st Street North and Arkansas Avenue.

**BACKGROUND:** The applicant is requesting amendment #1 to Conditional Use CON2003-37, a 24-hour car wash. The request is to allow a dryer on two (2) automatic wash bays; condition #1 of CON03-37 contained the following development standard - “no dryer allowed on the automatic wash bay.” The 0.97-acre, LC Limited Commercial (“LC”) zoned and platted site is located on the southeast corner of the 21<sup>st</sup> Street North – Arkansas Avenue intersection. The car wash is the most recent development on the 21<sup>st</sup> – Arkansas intersection, which has national and regional retail franchises; Kentucky Fried Chicken, Quik Trip convenience store, and O’Reilly’s auto supply store.

Development and zoning around the site is a mixture of mostly LC zoned retail and TF-3 Two-family Residential (“TF-3”) zoned duplexes and single-family residences. West of the site, across Arkansas Avenue, is a LC zoned Kentucky Fried Chicken fast food restaurant with a drive-through window and TF-3 zoned single-family residences. North of the site, across 21<sup>st</sup> Street North, there is the LC zoned Quik Trip convenience store and an O’Reilly’s auto supply store, with its B Multi-family Residential (“B”) zoned ancillary parking. East of the site, across an alley, there are: a LC zoned small free standing hair salon, a small storage building, a four-plex and a single-family residence, plus several TF-3 zoned single-family residences. Abutting the south side of the site there are TF-3 zoned duplexes and single-family residences. There is approximately 100 feet between the entrance to the two car wash bays and the abutting southern property, plus a landscape buffer with evergreens planted every 15 feet.

**CASE HISTORY:** CON2003-00037 and ZON2003-00047, a Conditional Use to allow a car wash with an associated zone change from TF-3 to LC was approved by the MAPC October 9, 2003, subject to replatting within a year. The property was replatted as the Buff Car Wash Addition, recorded August 3, 2004. The site was originally platted as Lots 2 – 20 (even), Brooks and Oldham Addition, which was recorded in 1902. A subsequent Administrative Adjustment, CON2006-03, allowed an “arched Spanish mission type of roof” instead of a “pitched gable roof” as originally required by condition #2 of CON2003-00037. Prior to CON2003-37/ZON2003-47 the site was a tire repair garage. A BZA Use Exception, 1-63, with conditions for a car sales lot on the east 70-feet of Lots 2, 4, 6, 8, 10, & 12, Brooks and Oldham Addition, was approved by the BZA February 26, 1963.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, B	Convenience store, auto supply
EAST:	LC, TF-3	Hair salon, small storage building, four-plex, single-family residence
WEST:	LC, TF-3	Fast food restaurant with drive through, single-family residences
SOUTH:	TF-3	Duplexes, single-family residences

**PUBLIC SERVICES:** The north side of the site has frontage on 21<sup>st</sup> Street North, a four-lane arterial with left-turn lanes. Arkansas Avenue, on the site’s west frontage is a two-lane residential road. North of the intersection Arkansas is a three-lane arterial. Improvements to the intersection include left turn lanes for traffic going north, east and west, plus brick pedestrian crosswalk areas. There are no other CIP projects scheduled. All utilities are available to this site.

**CONFORMANCE TO PLANS/POLICIES:** The *2030 Wichita Functional Land Use Guide of the Comprehensive Plan* identifies the area as appropriate for “Local Commercial” development. The “Local Commercial” category includes commercial, office and personal service uses that do not have a regional draw. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site was

approved for a Conditional Use, CON2003-37, for a car wash and associated LC zoning, ZON2003-47, with conditions that included no dryer allowed on the automatic wash bay(s). This condition (#1) was a design feature that intended to limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed amended condition addresses site design features and prohibits certain uses that are less compatible with the abutting and adjacent single-family residential development of the area. The automatic car wash bays with the automatic dryers shall have automatic bay doors at their entrance that close when the automatic car wash bays with the automatic dryers are in use. This condition directs the noise associated with the dryers towards 21<sup>st</sup> and away from the abutting residential properties, similar to having the site's vacuums located along 21st, maximizing the distance from the abutting and adjacent residential properties.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request for the amendment to condition #1 of Conditional Use, CON2003-37, be **APPROVED**, subject to the following conditions:

- A. The car wash shall be developed according to a revised site plan showing the location of the automatic car wash bays with the automatic dryers. The automatic car wash bays with the automatic dryers shall have automatic bay doors at their entrance that close when the automatic car wash bays with the automatic dryers are in use. The site shall be maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code, plus on site pole lights no higher than 14-foot with no lighting located south of the entrance off of Arkansas Avenue, hooded and directed onto the site, a 20-foot tall monument sign 138-square foot in size.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Development and zoning around the site is a mixture of mostly LC zoned retail and TF-3 Two-family Residential ("TF-3") zoned duplexes and single-family residences. West of the site, across Arkansas Avenue, is a LC zoned Kentucky Fried Chicken fast food restaurant with a drive through window and TF-3 zoned single-family residences. North of the site, across 21<sup>st</sup> Street North, there is the LC zoned Quik Trip convenience store and an O'Reilly's auto supply store, with its B Multi-family Residential ("B") zoned ancillary parking. East of the site, across an alley, there are: a LC zoned free standing hair salon, a small storage building, a four-plex and a single-family residence, plus several TF-3 zoned single-family residences. Abutting the south side of the site there are TF-3 zoned duplexes and single-family residences. The car wash is the most recent development on the 21<sup>st</sup> – Arkansas intersection, which has national and regional retail franchises; Kentucky Fried Chicken, Quik Trip convenience store, and O'Reilly's auto supply store.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial, which accommodates office, retail, commercial and complementary land use. The site could continue to operate as a car wash with the current conditions of CON2003-37.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the condition that, "The automatic car wash bays with the automatic dryers shall have automatic bay doors at their entrance that close when the automatic car wash bays with the automatic dryers are in use." This should limit noise, lighting, and other activity from adversely impacting abutting residential zoning and developments.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *2030 Wichita Functional Land Use Guide of the Comprehensive Plan* identifies the area as appropriate for "Local Commercial" development. The "Local Commercial" category includes commercial, office and personal service uses that do not have a regional draw. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites

should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site was approved for a Conditional Use, CON2003-37, for a car wash and associated LC zoning, ZON2003-47, with conditions that included no dryer allowed on the automatic wash bay(s). This condition (#1) was a design feature that intended to limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed amended conditions addresses site design features and prohibits certain uses that are less compatible with the abutting and adjacent single-family residential development of the area. The automatic car wash bays with the automatic dryers shall have automatic bay doors at their entrance that close when the automatic car wash bays with the automatic dryers are in use. This condition directs the noise associated with the dryers towards 21<sup>st</sup> and away from the abutting residential properties, similar to having the site's vacuums located along 21st, maximizing the distance from the abutting and adjacent residential properties.

5. Impact of the proposed development on community facilities: No more than what is present with the current car wash.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**RUSS EWY, BAUGHMAN COMPANY, PA, AGENT FOR THE APPLICANT** said the applicant has requested that the requirement for automatic bay doors on the south side or the entrance side of the car wash be struck from the recommendations.

**CHAIRMAN VAN FLEET** asked staff if they had a response to the applicant's request to remove the doors from the requirements.

**LONGNECKER** said he and the applicant have agreed to disagree on that issue.

There was brief discussion concerning location of the doors and the entrance into the bays from the south side.

**MARNELL** clarified that the dryers would be on the north end of the building. He also asked what "type" of car wash this was.

**LONGNECKER** said the dryers would be on the north end of the building and added that this was a high water pressure type car wash.

**MILLER STEVENS** commented then the rationale for the bay doors is for noise abatement.

**HENTZEN** asked how far the doors were located from a residential area.

**LONGNECKER** said scaled off with GIS it is approximately 100 feet. He said that was from the back of the automatic bays to the property line at the back of the site.

**MARNELL** said he seems to recall an issue with car washes before having to do with dryers and placement of dryers. He asked isn't there a noise standard, as opposed to just guessing? He asked isn't there something in the Unified Zoning Code?

**MILLER** said there is a noise ordinance which states the noise has to be so many decibels above the ambient noise. He said several years ago they borrowed the measuring machine from the Health Department and visited several car washes to measure the decibels; however, the noise at the car washes never got far enough above the level to trigger a violation. He said planes flying overhead were noisier than the car washes. He said the reason staff was sensitive to this location was because a car wash went into a location in District V facing east across a four-lane arterial street and they have had numerous



complaints from residences on the west of the site, that are between 130-150 feet from the car wash. He said there has been some discussion regarding the possibility of retrofitting doors for closed bays at that location.

**MARNELL** asked if this car wash exceeded the noise ordinance.

**MILLER** commented that they haven't checked this particular location.

**MARNELL** asked if a reasonable compromise would be instead of requiring doors; add a clause that doors be added if the noise exceeds the noise ordinance.

**MILLER** said he supposed that would be a reasonable compromise; however, he added he would not want to listen to the noise, as close as these residences are to the site.

There was discussion concerning residences to the south and east of the location; their proximity to the bays; and speculation about which residences were most affected by the noise.

**SHERMAN** asked why the applicant did not want to install the doors.

**RUSS EWY, BAUGHMAN COMPANY, PA, AGENT FOR THE** said this was a case that they did four to five years ago that was originally an old, blighted gas station. He said at that time, there was a lot of design consideration by this board and the DAB. He commented that they went through approximately six to seven site plans. He mentioned installation of the standard masonry wall with evergreen plantings every 15-20 feet. He said with construction of the wall and the increased landscaping, they felt the expense of adding the doors would not add much benefit as opposed to the cost.

**FOSTER** asked how many car washes at this location a day, month, year? What kind of numbers are they talking about?

**EWY** commented that they never got into that. He said they never discussed the automatic bays because the developer at that time had no intention of installing automatic dryers. He said over the course of operations, especially during the winter, the owner of the car wash receives a number of calls about people using the automatic car wash bays, going down 21<sup>st</sup> Street and the alley and creating "glaciers" from water dripping from the cars. He said the automatic dryer seemed to be the solution to that problem.

**SHERMAN** clarified that this was a simple garage door and asked about the cost.

**EWY** said yes, it was a garage door type operation and briefly explained the car wash process. He said he understood it would cost anywhere from \$5,000 - \$7,000 for installation of the doors.

**JOHNSON** said he felt alright about not having doors, as long as the site met the noise ordinance test.

**SHERMAN** (Out @3:00 P.M.)

**MOTION:** To approve subject to staff recommendation and add that doors will be required if noise complaint tests show that the noise exceeds the noise ordinance.

**MARNELL** moved, **JOHNSON** seconded the motion, and it carried (12-0).

**MCKAY** – Abstained.

**MITCHELL** asked where the complaints would generate from?

**MARNELL** said anywhere and then it could be tested.

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**FOSTER** recused himself from the item and left the meeting.

8. **Case No.: DER2010-01** - Request The City of Maize seeks unilateral annexation of various tracts of land located adjacent to the City of Maize.

Generally located adjacent to the City of Maize

**Background:** On January 18, 2010, the City of Maize passed Resolution No. 475-10 authorizing a public hearing on March 22, 2010, for the purposes of considering the unilateral annexation of 25 various tracts of lands located adjacent to the City of Maize.

Prior to unilaterally annexing property, Kansas statutes require that a plan be prepared indicating the means by which city services will be extended to the area proposed for annexation. The City of Maize has not submitted to the MAPD, a copy of the service plan describing the extension of services to the annexation areas.

**Analysis:** Kansas statutes governing unilateral annexations provide for official notification to certain local officials, including planning commissions having jurisdiction in the area. Additionally, Kansas statutes require that the planning commission review the proposal and make a finding of compatibility or incompatibility with any adopted land use or comprehensive plans related to the area and the annexing city.

After review by staff, it has been determined that 10 of the tracts (located immediately west of Ridge Road, and adjacent to the City of Maize) proposed for unilateral annexation fall outside the City of Maize 2030 Urban Growth Area as designated within the Wichita-Sedgwick County Comprehensive Plan *Preparing for Change*, adopted and updated by the Metropolitan Area Planning Commission and the Board of County Commission in May 2005. Furthermore, these 10 tracts also fall outside Maize's future urbanized growth area as identified in the latest version (August 2006) of the City of Maize Comprehensive Plan Map. Staff has concluded that 10 tracts of land contained within the proposed unilateral annexation by the City of Maize are not consistent with the Wichita-Sedgwick County Comprehensive Plan.

**Recommended Action:** That the Metropolitan Area Planning Commission pass a motion finding the unilateral annexation proposed by Resolution No. 475-10 of the City of Maize contains 10 tracts of land that are not consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

**Attachments:** Attachment No. 1 - Resolution No. 475-10 and map.  
Attachment No. 2 - 2030 Urban Growth Areas Map, May 2005.

**DAVE BARBER**, Planning Staff presented the Staff Report. He said staff has researched the unilateral annexation request and found that 10 tracts (located immediately west of Ridge Road, and adjacent to the City of Maize) fall outside the City of Maize 2030 Urban growth Area as designated with the Wichita-Sedgwick County Comprehensive Plan. He said staff is requesting that the Planning Commission find that these 10 tracts of land are not consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

**HILLMAN** asked about several tracts east of Tyler Road and west of Ridge Road that are already within the Maize City Limits.

**BARBER** commented that the current City of Maize Corporate City Limits exceed the City of Maize 2030 Urban Growth Area as shown in the Wichita-Sedgwick County Comprehensive Plan.

**HILLMAN** asked how that happened.

**BARBER** said the larger tracts were annexed on a “consent basis” within the couple of years, and that some of the smaller tracts have been unilaterally annexed within the last 6 months.

**HILLMAN** asked if the Planning Commission voted on those.

**BARBER** said yes, he has been to the Planning Commission a couple of times on Maize unilateral annexations. He said the Planning Commission’s role is to make a finding as to consistency with the Comprehensive Plan. He said the MAPC’s action has no bearing on the final actions of the City of Maize.

**MOTION:** The unilateral annexation proposed by Resolution No. 475-10 of the City Maize contains 10 tracts of land that are not consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

**MARNELL** moved, **DENNIS** seconded the motion, and it carried (12-0).  
**FOSTER** – Abstained.

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**CHAIRMAN VAN FLEET** announced that an Open House for the Metropolitan Transportation Plan 2035 would be taking place at the Water Center at 4:30 p.m. that evening. He invited Commission members to attend.

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**NON-PUBLIC HEARING ITEMS**

**9.** Case No. Downtown Master Plan Update

**SCOTT KNEBEL**, Planning Staff presented the Downtown Master Plan Update as follows:  
Walkshops

- December 3-4, 2009
- Over 100 participants
- Nearly 800 photos with comments ([www.flickr.com/photos/walkshops](http://www.flickr.com/photos/walkshops))
- Electronic polling of themes
  - Increase bicycle/mounted patrols
  - Improve transit
  - Cleaner gateways to downtown
  - “Complete” streets
  - Outdoor cafes & street events
  - Pedestrian-oriented retail
  - Housing, retail, and restaurants on river
  - More parks and recreation trails

Market Findings Workshop

- January 13, 2010
- Over 350 attendees
- Preliminary marking findings
  - Housing
  - Office

- Hotel
- Retail
- Local panel response
- Question and answer session
- [www.downtownwichita.org](http://www.downtownwichita.org)

#### Housing Findings

- 1,000 units in next 5-7 years
- Market demographics
  - 71% younger singles/couples
  - 20% empty nesters
  - 9% families
- 50/50 rental/for sale unit mix
- Current rates are appropriate for the future, but the future units should be smaller and have a more flexible design

#### Office Findings

- Class A rent comparably low
- No multi-tenant office space constructed in over 20 years
- Vacancy of Class A is 5%
- Relatively little space for existing tenants to expand or new tenants to locate
- Future opportunities
  - New office in mixed-use, pedestrian-oriented clusters
  - Proximate parking and transit a necessity for Class A office

#### Hotel Findings

- Room revenue growing
- Occupancy rates comparably high
- Number of rooms comparably low
- Only 12% of Wichita's rooms are in downtown but 42% of the office space and the convention center are located downtown
- Future opportunities
  - Limited service hotels located in proximity to the convention center
  - Hotels should be clustered in mixed-use, pedestrian-oriented environment

#### Retail Findings

- Downtown no longer a "mass market" retail attraction – nationally, not just Wichita
- Downtown retail should strategically building upon existing strengths – niche markets
- Strategic market focus should be on greater market capture from existing customers and cultivating the most likely potential customers

#### Survey Results

- Downtown housing needs to be price competitive
- More parks, retail, and amenities needed
- Focus on creating urban work environment preferred by next-generation workforce
- Provide retail in an urban, walkable environment
- Make downtown streets more interesting, vibrant, and safe through pedestrian-scaled architecture, streetscape amenities, bike lanes, crosswalks, and street lighting

#### What's Next?

- WDDC Annual Lecture
  - February 25<sup>th</sup>, 5:30 p.m. – Scottish Rite Center
- Downtown Master Plan Charette

- February 27<sup>th</sup>, 9:00 a.m. – Wichita Art Museum
- Strategies for a Vibrant Downtown Workshop
  - Week of April 5<sup>th</sup> or April 12<sup>th</sup>
- Draft Master Plan for Downtown Wichita
  - Week of May 17<sup>th</sup> or May 24<sup>th</sup>
- Strategy Workshops
  - Summer 2010
- Final Master for Downtown Wichita
  - Early Autumn 2010

**KNEBEL** introduced **JEFF FLUHR, PRESIDENT, WICHITA DOWNTOWN DEVELOPMENT CORPORATION (WDDC).**

**FLUHR** thanked City staff and recognized the City's partnership on the Downtown Master Plan project. He said they are in a great place and briefly reviewed progress on the project to date. He mentioned the WDDC lecture series which brings speakers with a national perspective in to discuss issues that cities are dealing with, which began last year with Alexander Garvin. He said attendance far exceeded expectations with about 525 attendees at the lecture. He said he believes the community is excited about downtown and where it is going. He referenced the invitation (handout) on the next lecture entitled "Progressive" with featured speaker Jim Cloar, Penn Institute of Urban Research, on Thursday, February 25, 2010 beginning at 5:30 p.m. He mentioned that WDDC staff had put together a presentation featuring images of events in Wichita that will play during the reception. He briefly reviewed Mr. Cloar's contributions to developments in Tampa, Dallas, and St. Louis. He mentioned the upcoming charette at the Art Museum Saturday, February 27, 2010.

He said last summer WDDC redid their website. He said they went from receiving 16,000 hits in December to over 33,000 hits in January which they believe is an indication of the excitement about the project. In addition, he said people are staying on the site for up to four minutes. He said they are also receiving calls nationally about the project. He credits this to the Goody Clancy team and the city's strong economic market driven approach to the project. He said he was available to answer any questions and concluded by thanking the Commission for their support of the project.

**HENTZEN** said he would like to make an observation. He said he has been hearing about downtown Wichita since 1951. He said the greatest asset that is also mentioned is the river, but nothing is ever done about it and he thinks people in Wichita are tired of hearing about it. He said they have spent money on financing hotels and tax increment districts (which they received negative publicity on). He said take advantage of the river or forget about it. He mentioned the money being spent on sidewalks, bike paths, parking garages, hotels, etc. and stated that the river still has not been addressed, assuming the Army Corps of Engineers will let the City do something along the river. He said he hopes they have hit the right thing this time, but he is reserved about the project.

**FLUHR** said one of the most dynamic images he has seen is the WSU rowing team using the river. He said they have had conversations on how to activate and program the river. He said if Chicago can change the direction of a river then they can figure out a way to have activity on the river. He said Goody Clancy has looked at the Waco site next to the Broadview and developed an image with mixed uses and activities along the river.

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The Metropolitan Area Planning Department informally adjourned at 3:40 p.m.

State of Kansas                    )  
Sedgwick County                ) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)